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Patent
Attorney Docket No. 003300-872

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Kjell OLMARKER et al.

Application No.: 09/980,784

Filing Date: January 8, 2002

Title: ANTIBODIES TO NUCLEUS PULPOSUS IN DISC HERNIATION, DIAGNOSTIC KIT, MEDICAL PREPARATION AND TREATMENT

Group Art Unit: 1644

Examiner: Michail A. Belyavskiy

Confirmation No.: 8785

AMENDMENT/REPLY TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is a reply for the above-identified patent application.

- ☐ A Petition for Extension of Time is also enclosed.
- ☐ Terminal Disclaimer(s) and the ☐ \$55.00 (2814) ☐ \$110.00 (1814) fee per Disclaimer due under 37 C.F.R. § 1.20(d) are also enclosed.
- ☐ Also enclosed is/are _____

- ☐ Small entity status is hereby claimed.
- ☐ Applicant(s) requests continued examination under 37 C.F.R. § 1.114 and enclose the ☐ \$385.00 (2801) ☐ \$770.00 (1801) fee due under 37 C.F.R. § 1.17(e).
- ☐ Applicant(s) requests that any previously unentered after final amendments not be entered. Continued examination is requested based on the enclosed documents identified above.
- ☐ Applicant(s) previously submitted _____

_____ on _____,
for which continued examination is requested.
- ☐ Applicant(s) requests suspension of action by the Office until at least _____, which does not exceed three months from the filing of this RCE, in accordance with 37 C.F.R. § 1.103(c). The required fee under 37 C.F.R. § 1.17(i) is enclosed.
- ☐ A Request for Entry and Consideration of Submission under 37 C.F.R. § 1.129(a) (1809/2809) is also enclosed.

- ☒ No additional claim fee is required.
- ☐ An additional claim fee is required, and is calculated as shown below.

AMENDED CLAIMS					
	No. of Claims	Highest No. of Claims Previously Paid For	Extra Claims	Rate	Additional Fee
Total Claims		MINUS =	0	x \$18.00 (1202) =	\$ 0.00
Independent Claims		MINUS =	0	x \$86.00 (1201) =	\$ 0.00
If Amendment adds multiple dependent claims, add \$290.00 (1203)					
Total Claim Amendment Fee					\$ 0.00
<input type="checkbox"/> Small Entity Status claimed - subtract 50% of Total Claim Amendment Fee					\$ 0.00
TOTAL ADDITIONAL CLAIM FEE DUE FOR THIS AMENDMENT					\$ 0.00

- ☐ A check in the amount of _____ is enclosed for the fee due.
- ☐ Charge _____ to Deposit Account No. 02-4800.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, 1.20(d) and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800. This paper is submitted in duplicate.

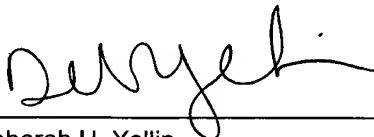
Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

P.O. Box 1404
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Date: March 10, 2004

By



Deborah H. Yellin
Registration No. 45,904



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In re Patent Application of)

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Application No.: 09/980,784)

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For: ANTIBODIES TO NUCLEUS)
PULPOSUS IN DISC HERNIATION,)
DIAGNOSTIC KIT, MEDICAL)
PREPARATION AND TREATMENT)

Group Art Unit: 1644

Examiner: Michail A. Belyavskyi

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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Response to Restriction Requirement is in complete response to the Official Action (Requirement for Restriction) mailed February 11, 2004. Applicants respectfully elect, **with traverse**, Group 1 (Claim 1), which is drawn to a kit for diagnosing disc herniation, comprising antigens from nucleus pulposus cells. Applicants respectfully reserve the right to pursue any non-elected subject matter in a divisional or continuation application, if it is not rejoined to the subject matter elected herein.

37 C.F.R. § 1.475 and M.P.E.P. § 1893.03(d) indicate that when a group of inventions is claimed in a national stage application (filed under 35 U.S.C. § 371) unity of invention is fulfilled when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. Thus, even if a group of inventions is claimed, a restriction for lack of unity should not be made unless the claims lack the same or corresponding special technical features.

The Office Action states that the six cited Groups are distinct from each other because they are purportedly different with respect to ingredients, method steps, and endpoints which require non-coextensive searches. Applicants respectfully disagree.

All of the claims, from Groups I-VI, are drawn to antigens/antibodies of nucleus pulposus cells and uses thereof in diagnosis and treatment. Specifically, the claims are drawn to a kit for diagnosing disc herniation, comprising antigens from nucleus pulposus cells, methods for treatment of disc herniation comprising administering an anti-antibody to antibodies of nucleus pulposus cells, methods for treatment of disc herniation comprising administering false antibody to nucleus pulposus cells, methods for treatment of disc herniation comprising administering a soluble antigens from nucleus pulposus cells, methods for the diagnosis of disc herniation comprising administering a soluble antigens from nucleus pulposus cell, and methods for treatment of disc herniation comprising administering a compound that prevents the binding of serum antibodies to nucleus pulposus cells to bind to nucleus pulposus.

Thus, there is a technical relationship between each of the groups, as they are all drawn to the treatment/diagnosis of disc herniation using nucleus pulposus cells or kits for same. Applicants request that the claims be rejoined and examined together.

CONCLUSION

Should the Examiner have any questions regarding this response, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,
BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: March 10, 2004

By:



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